IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21-2-2007

Coram

The Honourable Mr.Justice N.PAUL VASANTHAKUMAR

W.P.No.7716 of 1998

The Management of
Thiruvalluvar Transport Corporation,
now State Express Transport Corporation
(Tamil Nadu Division-I), Ltd.,
Thiruvalluvar House, Pallavan Salai,
Chennai. ... Petitioner

Vs.

1. Rathnapandian

2. The Presiding Officer,
Labour Court,
Cuddalore. ... Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India, praying this Court to issue a writ of Certiorari calling for the records connected with I.D.No.129 of 1993 and quash the award dated 26.9.1996 made by the second respondent in the Industrial Dispute.

For Petitioner : Mr.C.Saravanakumar
for M/s.Ramasubramaniam
Associates

For 1st Respondent : Mr.G.Purusothaman

2nd Respondent : Court

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O R D E R

Prayer in this writ petition is to quash the award made by the Labour Court, Cuddalore in I.D.No.129 of 1993 dated 26.9.1996.

2. The brief facts necessary for disposal of the writ petition

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as stated in the affidavit are as follows.

(a) First respondent was appointed as driver in the petitioner Transport Corporation. While the petitioner was driving the corporation bus on 22.11.1988, the bus met with an accident at about 9.55 p.m. and in the accident, three persons died. The bus owned by the Corporation was also damaged.

(b) Writ petitioner management issued charge memo on 22.12.1988 to the first respondent. A criminal case was also registered against the first respondent for the offences under sections 279, 333 and 304A IPC. The Judicial First Class Magistrate, Karaikkal acquitted the first respondent in respect of the criminal charges by judgment dtaed 13.11.1990.

(c) For the charge memo issued on 12.12.1988, the first respondent submitted his explanation on 23.1.1989. The explanation having been found not satisfactory, an enquiry was conducted against the first respondent and the enquiry officer found that the first respondent was guilty of the charges and submitted his report on 16.4.1989. The petitioner management accepted the enquiry officer's report and issued second show cause notice on 18.11.1989 to show cause as to why the first respondent should not be dismissed. The first respondent submitted his explanation on 25.1.1990 and thereafter the petitioner dismissed the first respondent on 15.8.1990.

(d) The first respondent raised a dispute before the Labour Officer, Tanjore, and as the conciliation efforts failed, the Labour Officer submitted failure report on 16.5.1991. Then the first respondent raised industrial dispute before the second respondent, which was tried as I.D.No.123 of 1993.

(e) The contention raised in the industrial dispute through the claim statement filed by the first respondent was that the person, who drove the moped, suddenly came to the middle of the road and fell down and at that time, even though first respondent applied the brake and tried to stop the bus, the vehicle got pulled towards right and hit the lamp post due to drizling at that time. The first rsondent became unconscious and he was admitted in the hospital wherein he was questioned about the accident after regaining his consciousness and the first respondent explained to the Superintendent of Depot named Sriramulu as to how the accident happened.

(f) It is further case of the first respondent that while he was in the hospital, he came to know that three persons one

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pedestrian, one cyclist and the person, who was driving the moped died in the accident. The Karaikkal Traffic Police filed case before the Judicial First Class Magistrate, Karaikkal and the criminal Court acquitted the first respondent. In the enquiry conducted, Sriramulu, Superintendent (Inspection) was examined on the side of the management and the first respondent also gave evidence. No eye witness of the incident was enquired into. The enquiry officer erroneously found that the charges are proved. The said erroneous enquiry report was accepted, based on which the first respondent was terminated from service.

(g) According to the first respondent, the said termination is contrary to the standing orders, which requires taking note of the past record of service and that the termination is contrary to Section 12(3) settlement signed in 1986, under which on acquittal by the criminal court, the management should reinstate the workman concerned.

3. The writ petitioner mangement filed counter affidavit before the Labour Court and stated that due enquiry was conducted and show cause notice was issued and the reply of the first respondent having been found not satisfactory, order of punishment was imposed and therefore there is no illegality in the same.

4. The Labour Court on consideration of the entire matter, found that even though there is no procedural violation during the conduct of enquiry, on merits found that the first respondent is not guilty of charges and passed the award ordering reinstatement with continuity of service and backwages. The said award of the Labour Court is challenged by the petitioner/Transport Corporation in this writ petition.

5. The learned counsel for the petitioner management argued that the domestic enquiry having been held to be conducted in a fair and proper manner, the second respondent is not justified in interfering with the punishment and ordered reinstatement with backwages and continuity of service, which is an excess of jurisdiction. Learned counsel also contended that the charge being serious in nature and due to the accident three persons died, the Labour Court ought to have confirmed the order of dismissal passed by the management. According to the learned counsel, the acquittal in the criminal case has nothing to do with the departmental proceedings and prayed for allowing the writ petition by setting aside the award of the Labour Court.

6. The learned counsel for the first respondent submitted that

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there is no infirmity in the award and as per section 11-A of the Industrial Disputes Act, 1947, the Labour Court is competent to go into the merits of the matter and find out as to whether the charge levelled against the first respondent is proved, even though the procedure adopted is proper and can cancel or modify the punishment.

7. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned counsel for the first respondent.

8. The point in issue is whether the first respondent is responsible for the accident by driving the bus in a rash and negligent manner and whether the charges levelled against the first respondent are proved by the management by acceptable evidence.

9. The Labour Court found that no eye witness was examined during the enquiry. The sketch produced by the management shows that there was a rice mill and the house of one Mohammed Basha and there is nothing to show that the rice mill was not working at that time. Similarly, there is no evidence to show that the said Mohammed Basha was not in the house at the time of accident. None from the mill or from the house of Mohammed Basha was enquired into nor any statement from anyone of them was obtained. Though statement from one Thiruvasakamoorthy and one Ravichandran residing at Door No.80 were obtained, they were not examined at the time of enquiry to corroborate their statements. The said statements were marked only through M.W.1 Superintendent (Inspection), who is not an eye witness. None of the passengers, who travelled in the bus gave any statement and no one was examined. Even the conductor of the bus was not examined. The Motor Vehicle Inspector's report indicated that the speed at which the first respondent drove the vehicle at the time of accident was only 40 km per hour. Three persons died in the accident were under intoxication of alcohol and the same is obvious from the postmortem certificate and chemeical expert's report. Taking note of the overall consideration of the view the finding given by the Enqiury Officer that the first respondent was rashly and negligently driving the vehicle was found unsustainable.

10. As rightly contended by the learned counsel for the first respondent, the Labour Court is entitled to go into the merits of the issue, even if enquiry was conducted in a fair and proper manner under section 11-A of the Industrial Disputes Act. It is so held in the Judgment of the Honourable Supreme Court reported in,

(a) (1973) 1 SCC 813 (Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.,) wherein in paragraphs 38 to 41 it is held as

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follows,

> "38. All parties are agreed that even after Section 11-A, the employer and employee can adduce evidence regarding the legality or validity of the domestic enquiry, if one had been held by an employer.
>
> 39. Having held that the right of the employer to adduce evidence continues even under the new section, it is needless to state that, when such evidence is adduced for the first time, it is the Tribunal which has to be satisfied on such evidence about the guilt or otherwise of the workman concerned. The law, as laid down by this Court that under such circumstances, the issue about the merits of impugned order of dismissal or discharge is at large before the Tribunal and that it has to decide for itself whether the misconduct alleged is proved, continues to have full effect. In such a case, as laid down by this Court, the exercise of managerial functions does not arise at all.
>
> 40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.
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> 41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge The Tribunal may also hold that the order of

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discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to re-appraise the evidence for itself. Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, Section 11-A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time. Both categories are now put on a par by Section 11-A.

41-A. Another change that has been effected by Section 11-A is the power conferred on a Tribunal to alter the punishment imposed by an employer. If the Tribunal comes to the conclusion that the misconduct is established, either by the domestic enquiry accepted by it or by the evidence adduced before it for the first time, the Tribunal originally had no power to interfere with the punishment imposed by the management. Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh indicating victimisation. Under Section 11-A, though the Tribunal may hold that the misconduct is proved, nevertheless it may be of the opinion that the order of discharge or dismissal for the said misconduct is not justified. In other words, the Tribunal may hold that the proved misconduct does not merit punishment by way of discharge or dismissal. It can, under such circumstances, award to the workman only lesser punishment instead. The power to interfere with the punishment and alter the same has been now conferred on the Tribunal by Section 11-A."

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(b) The above cited decision is followed in the recent decision reported in (2006) 6 SCC 325 (Amrit Vanaspati Co Ltd v. Khem Chand & Another) (paragraph 8).

(c) Similar is the view taken by the Honourable Supreme Court in the decision reported in (1976) 1 SCC 518 (Bharat Iron Works v. Bhagubhai Balubhai Patel), wherein in paragraph 16, the Honourable Supreme Court held thus,

> "16. On the principles of law laid down by this Court even though there was no defect in the domestic enquiry the tribunal was entitled to examine the evidence in the domestic enquiry in order to find out whether a prima facie case was made out or if the findings are perverse."

(d) In (1984) 4 SCC 635 (Rajinder Kumar Kindra v. Delhi Administration), the power of the Labour Court conferred under section 11-A of the Industrial Disputes Act, 1947, is explained as follows,

> "16. Mr.Jain contended that once Mr Kakkar came to the conclusion that the appellant was given full opportunity to participate in the domestic enquiry neither High Court under Article 226 nor this Court under Article 136 can sit in appeal over the findings of the enquiry officer and reappraise the evidence. We have not at all attempted to reappreciate the evidence though in exercise of the jurisdiction conferred by Section 11-A of the Industrial Disputes Act, 1947 both arbitrator and this Court can reappraise the evidence led in the domestic enquiry and satisfy itself whether the evidence led by the employer established misconduct against the workman. It is too late in the day to contend that the arbitrator has only the power to decide whether the conclusions reached by the enquiry officer were plausible one deducible from the evidence led in the enquiry and not to reappreciate the evidence itself and to reach the conclusion whether the misconduct alleged against the workman has been established or not. This Court in Workmen of Firestone Tyre and Rubber Company of India (P) Ltd. v. Management 2 held that since the introduction of Section 11-A in the

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> Industrial Disputes Act, 1947, the Industrial Tribunal is now equipped with the powers to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied upon by the employer establishes the misconduct alleged against the workman. It is equally well-settled that the arbitrator appointed under Section 10-A is comprehended in Section 11-A. This Court in Gujarat Steel Tubes Ltd. v. Gujarat Steel Tubes Mazdoor Sabha 3 held that an arbitrator appointed under Section 10-A of the Industrial Disputes Act, 1947 is comprehended in Section 11-A and the arbitral reference apart from Section 11-A is plenary in scope. Therefore it would be within the jurisdiction both of the arbitrator as well as this Court to reappreciate the evidence though it is not necessary to do so in this case. It is thus well-settled that where the findings of misconduct are based on no legal evidence and the conclusion is one to which no reasonable man would come, the arbitrator appointed under Section 10-A or this Court in appeal under Article 136 can reject such findings as perverse. Holding that the findings are perverse does not constitute reappraisal of evidence, though we would have been perfectly justified in exercise of powers conferred by Section 11-A to do so."

11. There is a specific finding with regard to the power of the Industrial Tribunal under Section 11A of the Industrial Disputes Act, 1947, that if the Labour Court is satisfied that the order of discharge or dismissal is not justified, either due to not proving the charge or even if the charge is proved, the punishment is excessive or unproportionate to the gravity of the offence, the Labour Court has jurisdiction to pass an award by setting aside the order of discharge or dismissal and can direct reinstatement of the workman concerned, or even impose lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

12. The decision cited by the learned counsel for the petitioner management, reported in 2000-II LLJ 1597 = JT 2000 (10) SC 228 (U.P.State Road Transport Corporation v. Mohan Lal Gupta and Others) is clearly distinguishable. In the said case, the charges were fully proved and the charges were in fact admitted by the employee. The Labour Court gave a finding that the workman had

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admitted all the charges and therefore the charges are fully proved. Still the Labour Court interfered with the punishment and the same was set aside. The relevant portion of the judgment is extracted hereunder,

> "..... The concerned workman, during the course of inquiry, in no uncertain terms, admitted his guilt though, however, he has stated that the same amounted to mere negligence and not a deliberate act. But the Labour Court, being the fact finding court, came to the conclusion that the charges stood proved and we are not in a position to reassess the factual situation at this stage of the proceedings under Article 136 of the Constitution. The finding as regards the proof of charges shall have to be taken as accepted and we do not see any perversity therein, having regard to the state of facts more so by reason of acceptance of the charge by the delinquent employee.
>
> On the wake of the situation as above, we are of the opinion that the question of award of any minor punishment in the facts of the matter under consideration does not and cannot arise and neither the Labour Court could alter the punishment of termination of service having regard to its assessment of facts and the contentions as regards the validity of the Inquiry proceedings. The employee has been found to be guilty of misappropriation and in such an event if the appellant-Corporation loses its confidence vis-a-vis the employee, it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own in allowing reinstatement. The misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Labour Court cannot exercise its discretion and alter the punishment."

13. Hence it is clear that the Labour Court is justified in going into the merits of the charges against the first respondent. There is no infirmity in the specific finding that no independent witnesses were examined to prove the charges and therefore the first respondent is not guilty of driving the vehicle in a rash and negligent manner and thereby held that the Enquiry Officer's finding is perverse. The said finding arrived at by the Labour Court is in

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accordance with Section 11-A of the Industrial Disputes Act, 1947, which calls for no interferance.

14. In the result, I hold that the the impugned award of the Labour Court dated 26.9.1996 is justified and consequently the writ petition filed by the management is dismissed. No costs.

After pronouncement of the order, learned counsel for the petitioner submits that pursuant to the interim order of this court dated 5.10.1998, the Management has deposited the amount of Rs.2,00,000/- to the credit of I.D.No.129 of 1993.

2. In view of the dismissal of this writ petition, the first respondent-Rathnapandian is permitted to withdraw the said amount.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsv/vr

To

The Presiding Officer, Labour Court, Cuddalore.

+1cc to Mr.S.Ramasubramaniam & Associates Sr 10913

+1cc to Mr.D.Harparanthaman, Advocate Sr 10557

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